Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the Forty-first Legislature at its Regular Session passed House Bill No. 72, being "AN ACT to amend Articles 2237, 2238, and 2239 of the 1925 Revised Civil Statutes of the State of Texas, providing for preparation of statement of facts and bill of exceptions; and declaring an emergency"; and,

WHEREAS, said Bill has been vetoed for the reasons set out in the following statement, which has been filed with said Bill in the office of the Secretary of State:

Executive Office
April 1, 1929

This Bill amends Articles 2237, 2238, and 2239 of the Revised Civil Statutes of Texas, having to do with the statement of facts upon appeal. In effect the Bill amends the law to permit an appellant in taking his case to the appellate courts to carry up a statement of facts in question and answer form. It also would permit him to incorporate his bills of exception into the question and answer statement of fact. This provision is left optional, as I understand the Bill, and the appellant may, if he desires, use the system now in force; that is, a narrative form of statement of fact with the bills of exception incorporated in the transcript of the record.

In 1905 the Legislature passed a law authorizing the question and answer form of statement of facts on appeal, and the Court of Criminal Appeals in the case of Baird vs State, 51 T C R 322, said, "The Legislature should pass an amendment to the present stenographic law and require a narrative form statement of facts to be prepared by counsel. This would save an enormous amount of unnecessary work to this Court".

The question and answer form of statement of fact was tried in this State more than twenty-years ago, and the law was amended to provide for a narrative form of statement of facts. The narrative form of statement of fact is necessarily briefer than the question and answer form and reduces the amount of work of the appellate courts. If this Bill should become the law, I am of the opinion that it would tremendously increase the work of the appellate courts and reduce the number of cases annually disposed of by the appellate courts. To this extent it would retard the administration of justice. I know that some of the lawyers who advocated this Bill argued that it would enable an appellant in appealing his case to include his exception in the statement of fact in question and answer form and show the matter just as it transpired in the trial court, without the necessity for any qualifications of bills of exceptions by the trial Judge. However, I am told by lawyers who practiced under the old system of question and answer form statement of facts that the trial judge would always dictate into the record at the time an exception was taken to his ruling a statement of his reasons for the ruling. In this manner he would express his qualifications to the bill of exceptions in the statement of fact. I am further told by lawyers who practiced under the system that

permitted the question and answer statement of facts and the inclusion of the bills of exception in the statement of facts, that it resulted in prolonging the trial of cases. It seems that when an objection was made to the introduction of testimony and the court sustained the objection that it always became necessary to retire the jury while the litigant who had offered the testimony took his bill of exceptions and stated what he expected to prove. These older practitioners further tell me that under the system re-adopted by this Bill that the judge was constantly forced to retire the jury while stating his reasons for sustaining or over-ruling objections, in order that he might not infringe upon the rule prohibiting a comment upon the weight of testimony.

If a judge is unfair in his manner of qualifying bills of exceptions the present law provides a remedy. It makes provisions for bystanders bills of exceptions and while this is a thing that lawyers like to avoid, still it gives a litigant protection against unfair qualification of bills of exceptions by the trial judge.

It is my judgment that the system provided for by this Bill would prolong the trial of cases in the trial courts and that it would increase the work of the appellate courts to an extent that would cause further delay in the administration of justice in the appellate courts.

I believe this Bill is a backward step in procedure instead of a measure simplifying the procedure.

For the reasons stated, therefore, it is my judgment that this Bill should be vetoed, and I hereby veto it.

Governor of Texas

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NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT I, DAN MOODY, Governor of the State of Texas, under and by virtue of the authority vested in me by the Constitution and Laws of this State, have vetoed said Bill for the reasons stated and on file, and do hereby proclaim said action to have been taken.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of State to be impressed hereon at Austin, Texas, this the 1st day of April, A. D. 1929.

Dan Moody
Governor of Texas

BY THE GOVERNOR:

Jane Y. McCallum
Secretary of State

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